IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.124 OF 2005
IN
SUMMARY SUIT NO.2891 OF 2004

Tata Motors & Anr. ....Plaintiffs

V/s.

M/s.Enterprises Motors & Ors. ....Defendants

Mr.N.G. Thakkar, Senior Advocate with Mr.G.B. Joshi with Mr.Vipul Bilve and Mr.Avinash Joshi i/b Mulla & Mulla & C. B. & C. for the Plaintiffs.

Mr.D.H. Mehta with Mr.Z.D. Sahukar for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH OCTOBER, 2005.

P.C. :

1. The suit is filed to recover an amount of Rs.49,66,338=07 with interest on the principal sum of Rs.34,70,470=29 at the rate of 15% p.a. Plaintiff No.2 is the H.D.F.C. Bank Limited. Defendant Nos.2, 3 and 4 are the guarantors of the dues of Defendant No.1.

2. Pursuant to a letter of intent and the acceptance thereof by the Defendants, a dealership agreement dated 18th November, 2000, was entered into between Plaintiff No.1 and Defendant No.1. Under the

dealership agreement, Plaintiff No.1 was to sell its automobiles and automobile products and accessories to Defendant No.1 on a principle to principle basis. That the agreement was entered into is not denied. Pursuant to the dealership agreement, Plaintiff No.1 raised its invoices. The goods were thus admittedly sold and delivered by Plaintiff No.1 to Defendant No.1 on the terms and conditions contained in and/or evidenced by the dealership agreement and said invoices. It is admitted that Defendant No.1 received the automobiles and the accessories/ spare-parts. I will deal with the defences raised in respect thereof shortly.

3. It would be convenient at this stage to mention that Defendant No.1 availed of certain credit/financial facilities from Plaintiff No.2 for making payment in respect of the said goods. Plaintiff No.2 was to make payment to Plaintiff No.1 in respect thereof on behalf of Defendant No.1. Documents in this regard too were executed between Plaintiff No.2 and the Defendants. Further a writing dated 30th May, 2001 was executed between Plaintiff No.1 and Plaintiff No.2. Admittedly the Defendants were not parties to the said writing. It was an internal arrangement between the Plaintiffs inter-se.

Under this agreement, Plaintiff No.1 was to deliver the goods for and on behalf of Plaintiff No.2 upon receipt of the funds and the goods were to be released to Defendant No.1 as and when Plaintiff No.1 received confirmation from Plaintiff No.2 that Defendant No.1 had made repayment to Plaintiff No.2 of the said amounts. Under clause 7 of that writing, Plaintiff No.1 indemnified Defendant No.2 for any loss incurred due to non-compliance of the undertakings contained therein. One of the conditions was clause No.3 which reads as under :-

> "3. On any default by the Dealer in repayment/lapse of a period of thirty days from disbursement, whichever is earlier, we shall, upon receipt of written instructions from you, take back the vehicles that are lying in our custody and refund the booking money for such vehicles to you along with the interest."

4. Defendant Nos.2, 3 and 4 executed personal guarantees in respect of the suit claim which have also been annexed to the plaint.

5. That the vehicles and the goods were received by Defendant No.1, is admitted. That Defendant No.1 retained the said vehicles and goods, is admitted. That Defendant No.1 never rejected the same, is also

admitted.

6. Mr.Mehta, the learned counsel appearing on behalf of the Defendants raised various defences on merits. Firstly, he submitted that Plaintiff No.1 is liable to pay Rs.49,591/- to Defendant No.1 towards the costs of advertisements issued by Defendant No.1. He was unable to show a single clause in the dealership agreement entitling Defendant No.1 to such a claim. In fact, clause 19 of the dealership agreement expressly states that Defendant No.1 was to advertise the goods "at his own expenses". The defence is therefore without any substance.

7. Mr.Mehta then submitted that Defendant No.1 sold some spare parts at an aggregate discount of Rs.7,52,650/- to his customers and that in fairness Defendant No.1 ought to pay the difference in price. Again he was unable to base his claim on any provision either of law or of the said agreement between the parties. This defence too is therefore, rejected.

8. Mr.Mehta, then submitted that as a result of a fire in the godown of Defendant No.1 goods worth Rs.7,07,276=81 were damaged. He submitted that in fairness Plaintiff No.1 ought to pay for this loss.

There is no provision in the dealership agreement entitling Defendant No.1 to be indemnified by Plaintiff No.1 in respect of the loss occasioned by a fire in his own godown. Mr.Mehta sought to found this claim upon clause 17 of the dealership agreement. Clause 17 pertains to the warranty. I am unable to understand how clause 17, which deals with warranty, has any bearing on this claim. The contention is unfounded.

9. Mr.Mehta's last contention on merits is that Defendant No.1 is entitled to be reimbursed a sum of Rs.8,51,234/- in respect of kits allegedly transferred by Defendant No.1 to the new dealer of Plaintiff No.1. Mr.Mehta stated that these kits were transferred pursuant to the dealership agreement and upon termination thereof. I have been through the termination clause of the dealership agreement. It does not say anything about the return of kits or the entitlement of Defendant No.1 to be reimbursed the value thereof. It is not even the case of Defendant No.1 that Plaintiff No.1 authorized or directed Defendant No.1 in writing to return the kits and/or promised to pay the said amount. This defence too is without any merit.

10. The defences raised thus far are not only sham but dishonest.

11. Faced with this, Mr.Mehta submitted that the suit is not maintainable, as it is based only on the said writing dated 30th May, 2001. I am unable to agree. The writing dated 30th May, 2001 is an internal agreement between the Plaintiffs inter-se. It is always open to the Plaintiffs to settle or adjust their outstandings in such a manner as they may desire.

12. It would have been a different matter had there been a dispute between Plaintiff Nos.1 and 2 inter-se about their right to recover from the Defendants. That dispute would have to be resolved independently. At present, they are both impleaded as Plaintiffs before me and there is no conflict between them. It is always open to Plaintiff No.2 to state that it is content if the entire amount is decreed in favour of Plaintiff No.1.

13. The Plaintiffs have categorically stated in paragraph 20 of the plaint that they have no objection to a decree being passed in favour of Plaintiff No.1 or jointly in favour of the Plaintiffs in respect

thereof. This naturally would be without prejudice to the rights of Plaintiff No.2 as well to claim the amount subject of course to the Defendants being given credit for amounts paid by them to either or both the Plaintiffs in respect of the suit transactions.

14. The plaint refers in detail and has annexed to it the dealership agreement and the documents prior thereto. The Plaintiffs have annexed the guarantees issued in favour of Plaintiff No.1. The Plaintiffs have in the plaint craved leave to refer to and rely upon and to their rejoinder annexed the invoices. The Plaintiffs have averred that for the payment of the said goods, Defendant No.1 availed of the credit facility/finance referred to in the said writing dated 30th May, 2001. But by doing so, Plaintiff No.1 has by no stretch of imagination given up its cause of action on the transaction of sale. Indeed Defendant No.1 utilized the finance facility from Plaintiff No.2 to liquidate partly the dues of Plaintiff No.1. The execution of all these documents is admitted. The value of the goods is also admitted. In the circumstances, it cannot be said that the suit is based on the aforesaid writing dated 30th May, 2001 alone. It is also based upon the other documents and transactions between Plaintiff No.1 and the

Defendants.

15. In the circumstances, there is no defence to the suit as far as Plaintiff No.1 is concerned. As far as Plaintiff No.2 is concerned, there is an arguable point as to whether this Court or the Debt Recovery Tribunal would have jurisdiction. However, in view of the Plaintiffs having agreed that the decree may be passed in favour of Plaintiff No.1 alone this point is academic. This order will however not prejudice the right of Plaintiff No.2 to pursue its remedies against the Defendants in any other proceedings. However the Defendants would naturally be entitled to credit of amounts if any are paid in this suit. There is also some dispute as to whether Plaintiff No.1 is entitled to interest and if so, at what rate.

16. In the circumstances, the Summons for Judgment is made absolute and the suit is decreed only in the sum of Rs.34,70,470=29 together with interest thereon at the rate of 15% p.a. from the date of the suit till payment and/or realization.

17. The Defendants are granted unconditional leave to defend in respect of the rest of the claim in

suit. In respect thereof the suit is transferred to the list of commercial causes. The Defendants to file their written statement within four weeks from today. Discovery and Inspection to be completed within six weeks thereafter. Summons for Judgment stands disposed of accordingly.